

REMARKS

Reconsideration of the above identified application is respectfully requested.

The present application continues the extraordinarily long prosecution of the present application and its parent application which issued as USP 6851218 on 2/8/2005 after a 10-year odyssey commencing on 10/31/1994.

In the parent application, the same examiner Rowan failed to allow even one claim, and forced the Applicant into two sequential appeals before the BPAI for overturning unwarranted rejections.

And now, the same examiner Rowan has yet again failed to allow even one claim in this improvement application, with the BPAI having fully reversed the examiner's latest unwarranted rejections in the Decision recently handed down on 9 March 2006.

In response to that favorable decision, Applicant filed by fax an amendment dated 3/15/2006; yet the examiner has failed to recognize this amendment in the present office action leaving to speculation whether or not that amendment was entered.

In an abundance of caution, the amendment to paras. 4 & 60 are being resubmitted above, and the examiner is requested to indicate whether or not that previous amendment, including the Supplemental Declaration, was entered.

On 5/10/2006, Applicant conducted a phone interview with the examiner to determine the status of the case following appeal, and whether or not the 3/15/06 amendment had been entered, and when the Notice of Allowance could be expected.

The examiner indicated that he did not know and would call back. He did not call back.

On 5/17/2006, Applicant left a phone message with Supervisor Peter Poon to ask the same questions; and instead examiner Rowan called back that day to indicate that 1-2 weeks more time was necessary to issue the Notice of

Allowance.

On 6/2/2006, Applicant left another phone message with examiner Rowan to determine the status, and on 6/5/2006 the examiner returned the phone call to indicate that the search had been updated and another reference (White) was uncovered; and the application was under review with Director Don Hajec in view of the favorable appeal decision.

On 6/5/2006, Applicant left a phone message with Director Hajec, who returned the call later that day. Applicant explained the long history of the parent, and now the improvement application, collectively covered three different appeals to the BPAI, and the failure of the examiner to allow even one claim.

Director Hajec indicated that re-opening of prosecution required his signature, and he would personally review the application to ensure the examiner's compliance with the applicable Rules.

Nevertheless, the Director and examiner have re-opened prosecution, and the examiner has yet again not allowed even one claim, and yet again has failed to comply with applicable MPEP provisions in making unwarranted rejections of all claims 1-20 under Sections 102 & 103.

This long, long history is relevant now, and will be relevant in yet any additional (fourth?) appeal to the BPAI as documented evidence of the examiner's continued fabrication of rote rejections without regard to each claim in the whole, and without regard to the newly applied references in the whole.

The fact of repeated rejections by the examiner, which rejections have again (1) and again (2) and again (3) been reversed by the BPAI is ample evidence of abuse by the examiner of the stringent legal requirements under Sections 102 & 103, the Patent Rules, and the MPEP provisions.

The present application is an improvement application containing many similar claims based on the parent application for which the BPAI has twice reversed the

examiner.

And notwithstanding those reversals by the BPAI the examiner fails to afford any weight to the specifically recited features of the various claims, and now applies additional references, which are not only irrelevant, but teach away from the improvement inventions.

Nor do those new references overcome the fundamental lack of evidence found by the three previous Boards of Patent Appeals and Interferences.

And now, Director Hajec has expressly authorized re-opening of prosecution without apparent regard to the long history of prosecution, or the substantial differences found in the improvement claims.

Applicant traverses the latest rejection of claims 1-6 under Section 102(b) over White.

The examiner's contentions in para. 2 lack merit and are erroneous, and fail to meet the stringent requirements under Section 102 for identity of structure, cooperation, function, and purpose.

Claim 1 recites an insect swatter, and White discloses only a toy gun.

The examiner's attempt to qualify his interpretation of the claim 1 lash "proximal end fixedly joined to said rod distal end" fails to afford due weight to the entire claim, and is evidence in and of itself that White is inapposite since claim 1 does not include the same qualification proffered by the examiner.

Claim 1 does not recite the qualified fixed attachment "until the swatter's trigger is pulled" as the examiner contends, but recites the fixed attachment unqualified in accordance with ordinary English definition and as used in the specification.

The common dictionary definition of "fixed" means firmly attached and not movable; remaining in the same position; and even, persisting obstinately.

The examiner's use of Figure 1 of White is erroneous,

since claim 1 is directed to Applicant's Figure 1 in which the lash is attached solely to the rod distal end and is expressly too short to reach the latch.

In other words, claim 1 recites the "uncocked" lash and swatter, whereas the examiner is applying Figure 1 of White for the "cocked" bands and gun.

To be certain, in the uncocked state of Figure 1 in White it would be impossible to "attach" in any way the 3-bands to either the extension 10 or the sight 4 because the 3-bands are merely the loose work product (ammunition) and do not form an integral part of the toy gun itself.

Claim 1 also recites that the lash is fixedly attached even after the lash is spontaneously contracted; yet when the bands in White are fired, they are propelled in toto, and cannot be fixedly attached. Instead, they are merely "releasably" resting on the toy in a distinction provided no weight by the examiner.

And, claim 1 further recites the fixed attachment of the lash to ensure that only the "lash distal end [is swatted] against said insect."

Note in this regard, that the lash recited in claim 1 has a "proximal" end and a "distal" end for which the examiner has afforded no weight.

The ordinary definition of proximal is nearest the point of attachment of an object; and the ordinary definition of distal is farthest or opposite to the point of attachment.

In claim 1 the recited lash 34 is attached at its proximal end to the distal end of the rod 12, and the lash is expressly shorter than the rod so that it can be elastically stretched to position the lash distal end at the rod proximal end when used.

In White, the 3-bands have no analogous proximal and distal ends since the bands are not fixedly attached to the toy at either end, and the 3-bands are already stretched to rest on the opposite ends of the toy, in a configuration that cannot anticipate the recited structure of claim 1 which does

not recite that the lash is already stretched and mounted on the rod as discussed above.

The fundamentally different configuration in White is necessary therein in order to project or catapult or hurl the entire three-bands far away from the toy as expressly taught by White.

Those three bands include a left band in figures 1 & 2 having a left end temporarily resting on the extension 10, a middle band, and a right band having a right end resting temporarily on the sight 4, and only after the gun is loaded, not before.

Note that the left and right ends in White do not qualify as proximal, or even distal, since they are intentionally not fixedly attached to the toy in order that they may be liberated therefrom.

Assuming arguendo that hurling of the 3-bands is contemplated toward an insect then it is more likely than not that the right end of the 3-bands, not the left end, would first reach that insect; and even then either that right end would hit that insect or the middle and right bands would hit that insect before the left band could; but this is pure speculation, which Section 102 does not condone, and the examiner has not shown otherwise.

The examiner has the burden to establish a rejection under Section 102 based on evidence, and that burden clearly has not been met, nor cannot be met by the disparate toy of White.

The examiner's contentions regarding method claims 4 & 6 are rote fabrications without regard to the express teachings of White; and fail to address missing method claim 2.

This is yet again, further evidence of the examiner's (and correspondingly the Director's) rush to reject the claims without regard to the rules and the evidence.

The examiner has now had sixteen years from the filing of the parent application in 1999 to update his search of the prior art, and now reopens prosecution based on quite old and

disparate references indicative of a blind attempt to deny Applicant even one claim in this significant improvement application for which the "newly uncovered" references have no relevance, except for teaching away and providing further evidence of the patentable novelty of the improvements.

Note that White is a 1930 patent; and that Robinson is an 1870 patent.

How is it possible that the examiner did not find these two references in 16 years of searching?

Rule 104 requires thoroughness and completeness, and, to be certain, the examiner is duty bound to comply with that rule.

The newly uncovered references after sixteen years of searching are merely evidence of the lack of relevant patents from which the examiner might choose in fabricating rejections, and that the examiner must now rely on nonanalogous art in his continued drive to deny Applicant of even one claim for his improvement.

Indeed, White clearly lacks any teaching whatsoever of its use, or possibility of use, in swatting insects; and the examiner's bald contention that "White performs the method steps recited" is further evidence of the examiner's perfunctory drive to reject each and every claim regardless of merits.

All three method claims 2, 4, and 6 recite the method of using the insect swatter to swat an insect, and no such method is disclosed (or suggested) in White.

The examiner's contention is mere fabrication; and especially egregious under the stringent requirements of Section 102.

Section 102 mandates that a single reference must contain within its four corners each and every feature recited in a single claim in the same cooperation and function.

Applicant's method claims 2, 4, 6 recite specific structure and specific use of that structure in specifically

swatting an expressly recited insect.

Where is any element from claims 2, 4, 6 expressly disclosed in White? And, where is the express combination of elements expressly disclosed in White?

Clearly, White does not disclose these specific method claims; and therefore cannot anticipate the novel methods recited.

The examiner's bald contention to the contrary clearly lacks any evidentiary support whatsoever, and is further evidence of the patentable novelty of the recited insect swatter and method of use, since the examiner, with considerable experience before the Patent Office, and with 16-years of additional experience examining this application and its parent is still unable to present an objective basis to reject all the claims.

What does White disclose or teach?

Even the most cursory review of the White reference clearly shows that White expressly teaches that the toy gun therein is configured to "discharge" or "catapult" or "project" the entire 3-bands in the whole toward an object in the express manner of a toy for use by a child.

Would or could a child have the prescience to use the toy gun as an insect swatter? Would even an adult?

And, of what significance is that?

The entire 3-bands are hurled from the toy gun in White, and it is a statistical impossibility that only the left end of the 3-bands (at the extension 10) could possibly swat an insect with any hope or likelihood of effecting the swatting function.

Claim 3 further recites the latch 20 and cooperating releasing means 24,20b, which both further cooperate with the lash being fixedly joined to the distal end of the rod in a combination yet again overlooked by the examiner in his rush to reject the claims.

In White, the extension 10 not only releases the 3-bands, but cooperates with the sight 4 to hurl the entire 3-

bands toward an object with no efficacy to limit that hurling for specifically swatting the left end of the 3-bands at the object.

As indicated above, the opposite right end of the 3-bands at the sight 4 would most likely precede in flight the left end at the extension 10, and render quite impossible the ability to strike the object with that left end. And, the examiner has not shown otherwise in his rush to reject.

Claim 5, like claim 3, recites the cooperation of the latch 20 and its releasing means 24,20b in the gun handgrip in a combination clearly not anticipated by White for the same reasons presented above.

The examiner has failed to show any evidence in White that the left end of the 3-bands resting at the extension 10 could in fact be used to reach and swat an insect without regard to the remainder of that 3-bands which has most mass, most inertia, and would most likely precede the left end of the 3-bands in free flight from the toy gun.

Accordingly, withdrawal of the rejection of claims 1-6 under Section 102(b) over White is warranted and is requested.

Applicant traverses the rejection of claims 7, 8, and 17-20 under Section 103(a) over White and Watkins.

Firstly, neither White nor Watkins is analogous art.

Applicant's field of endeavor, as expressly recited in the claims, is an insect swatter; and the toy guns of both White and Watkins are clearly not insect swatters.

Applicant's problems are expressly listed in the specification and include striking range; striking energy; weak, worn, damaged, and degraded lashes; and custom made bands having no counterpart in either White or Watkins, which, instead have different problems.

The two references, White and Watkins, are therefore nonanalogous art and fail to provide any evidentiary basis to reject any claim under Section 103.

Furthermore, the examiner has yet again failed to meet

the stringent requirements under Section 103, as presented in MPEP 706.02(j), to present relevant evidence in support of the rejection; and has failed to establish the legal motivation required under MPEP ch. 2100 in contradistinction from merely fabricated reasons to combine in hindsight.

The fundamental shortcomings of White are addressed above; and the examiner further admits the failure of White to teach a keyhole slot 30 as introduced in claim 7. And, independent claim 17 simply recites a slot 30 in the rod distal end, also not taught by White.

The examiner then jumps to the rote conclusion in para. 4 that: "it would have been obvious to provide White with a keyhole slot as shown by Watkins since merely one mechanically equivalent fastening means is being exchanged for another and the function is the same."

Not only is this bald contention erroneous on its face, but it lacks evidence in the two references, and it is not based on any legal motivation whatsoever; just mere examiner argument, speculation, and hindsight reconstruction.

Quite fundamental to the normal operation of the toy gun in White is the spring-mounted, pivoted sight 4 at the distal end of the barrel 1 around which the right end of the 3-bands is temporarily held.

The examiner baldly contends that it would have been obvious to replace that special sight 4 and its special function with the slot 34 from Watkins due to the allegedly "same function."

If this were done, then the right end of the 3-bands would be fixedly attached to the aft end of the barrel 1 in White, and would not release as intended! No discharge, no catapult, and no projection to a "considerable distance."

In other words, the very combination being proffered by the examiner is against the very teachings of White and would render the toy gun inoperable for its intended purpose!

This is a classic indication of hindsight fabrication by the examiner without due regard to the whole teachings of the

references being applied, and without due regard to Applicant's specific claims being rejected.

The "same function" the examiner opines? This contention is clearly erroneous, and not supported by any evidence in White and Watkins. And, the examiner has failed to provide any legal support in the MPEP or case law for this contention as specifically relevant under the Section 103 rejection of claims 7 and 17.

Furthermore, Watkins expressly teaches the combination of a rubber band 14 tied to a leather loop 16 by a string 37 which has no relevancy with the 3-bands used in White. The bands are therefore different, and the attachment of those bands in White and Watkins are also expressly different.

And, the two toy guns are fundamentally different between White which discharges the entire 3-bands away from the gun and Watkins where the band/leather 14,16 are not discharged away, but instead are used to throw the pea 20.

For method claim 8, the examiner simply contends that the "combination of White as modified by Watkins performs the method as recited," yet has again failed to explain this, and has failed to provide any evidence in support thereof.

Neither White nor Watkins disclose or suggest insect swatters in any form, nor could any modification thereof function as insect swatters based on the very teachings thereof.

The examiner is not permitted to use Applicant's own specification, and Applicant's own claims as the evidentiary basis to reject Applicant's own claims when the two references being applied have no teaching of swatting insects, but, to the contrary, expressly teach different methods of use as toy guns.

In White, the 3-bands together must be catapulted away by the fundamental teachings thereof, and therefore those 3-bands lack the requisite cooperation with the toy gun to retain the right end of the 3-bands on the gun and catapult only the left end of the 3-bands for swatting an insect as

recited in method claim 8.

And, in Watkins the proximal end of the band 14 is attached to the gun, but the distal end of the band 14 is tied to the leather loop 16 to catapult the pea 20, with no disclosed method for using the distal end of the band 14, or loop 16, to strike any object at all, let alone an insect.

"As modified" the examiner baldly contends, without due regard to the applied references and without any regard to method claim 8. And quite clearly, the examiner has not evaluated these two references in the whole, or method claim 8 in the whole.

For claim 18, the examiner merely lists elements 2,10,13 of White without regard to the combination recited in claim 18, and without regard to the whole of this claim and the two references.

As indicated above, the fundamental teaching of White is to catapult the entire 3-bands away from the gun no matter what the form of the triggering mechanism 2,10,13 being applied by the examiner.

In claim 18, the insect swatter is specifically configured to retain the lash first loop 36 in the slot 30 and expressly prevent the liberation of the entire figure-eight lash from the rod.

Claim 18 could not be more opposite from the toy gun of White in configuration and operation, and Watkins cannot change that fact without rendering inoperable the toy gun of White for its intended purpose.

For claim 19, the examiner simply identifies the three bands in White, without recognition and without due weight to the combination recited in claim 19 in which the collective spring rate is relevant to the lash, both while it is stretched and after it spontaneously contracts and still remains attached to the rod.

The substantial benefits of these features are found throughout the specification, and include increased stretching and increased striking range having no counterpart

in White when the 3-bands are simply catapulted away from the barrel 1.

As for claim 20, the examiner's mere contention of "appear to be identical" is not based on any evidence, and fails to consider this claim in the whole.

The examiner fails to identify any evidence in White or Watkins to support this bald contention of "identical," and the term "identical" has specific meaning for which the examiner has failed to afford any weight in his continued rush to reject each and every claim for any reason, not supported under the stringent requirements of Section 103.

Both figures 1 and 2 of White show that the length of the left band is about 41 mm; the length of the middle band is about 37 mm; and the length of the right band is about 35 mm. 41 is not identical to 37, and 37 is not identical to 35.

Indeed, White at col. 1, l. 21, expressly teaches that the "bands [are] formed of old inner tire tubes." What does this teach? Three old inner tire tubes?

Or, that the bands are cut by hand from one tube? And, if so, the three bands could not possibly be identical as recited in claim 19, and the examiner has not shown otherwise.

Furthermore, claim 20 additionally recites that the "knot is midway between said first and second loops." Yet, the examiner does not give any weight to this express recitation, but instead chooses to re-state claim 20 to find in White that "the knot is midway between the first and second and third loops."

What does that mean?

Why recharacterize claim 20?

Clearly, the examiner continues to disregard express claim language for proffering unwarranted rejections without regard to evidence, and without regard to the stringent requirements of the MPEP; and further without regard to the high hurdle for re-opening prosecution after loss on appeal.

Both the examiner and the Director have permitted reopening of prosecution for some reason, but, clearly, the newly applied references are fundamentally defective, and clearly teach away from Applicant's basic swatter and the improvement thereof.

Even a cursory review of White, see Figures 1 & 2, shows that the left connection 19 is located closer to the middle band than to the left band due to the different 37 mm & 41 mm lengths thereof.

The right connection 19 is located closer to the right band than to the middle band due to the different 35 mm and 37 mm lengths thereof.

Yet, none of this is relevant to claim 20 which recites a pair of identical bands 36,38 in which the first loop is retained in the slot 30 and the second loop is at the opposite end of the lash for attachment to the latch 20; and the knot 40 is midway between the first and second opposite loops.

Where are any analogous opposite loops disclosed in White?

Figures 1 & 2 of White clearly show 3-bands forming the common element having opposite ends retained on the extension 10 and the sight 4, with none of the two connections 19 being located midway between those opposite ends.

And, neither connection 19 is located midway between the adjacent bands.

No midway, no evidence, no basis for rejection.

Accordingly, withdrawal of the rejection of claims 7, 8, and 17-20 under Section 103(a) over White and Watkins is warranted and is requested.

Applicant traverses the rejection of claims 7-16 under Section 103(a) over White and Robinson.

Firstly, it is noted that the Robinson reference is not of record nor listed in the PTO-892, and is therefore unavailable as a reference.

Secondly, like White and Watkins, Robinson is

nonanalogous art since its field of endeavor is yet again toy guns and not insect swatters; and it is not relevant to Applicant's expressly stated problems described in the specification and summarized above.

It is quite conspicuous that the examiner continues to apply nonanalogous toy guns, and has continually failed to uncover and list of record any relevant insect swatter reference, of which, one can only guess, there would be many.

Rule 104 mandates thorough searching.

Why then has the examiner not listed any references specific to insect swatters? Perhaps, because such references would be evidence to teach away from Applicant's novel swatter?

Notwithstanding the examiner's contention, the elastic cord-C of Robinson cannot be the equivalent of any rubber band relevant to Applicant's claims or White since claim 7 recites a lash formed by a pair of bands 36,38; White teaches three bands; and Robinson discloses a single cord tied together at d.

The examiner contends that Robinson "shows a keyhole slot..." yet no such element is found in Robinson. Robinson clearly states and clearly illustrates that the cord-C is retained at its left end around the "knob a."

That knob-a extends downwardly from the barrel-B, has an enlarged head.

Where is any slot disclosed or shown in Robinson?

Where is any keyhole configuration disclosed or shown in Robinson?

The examiner has not explained this with any supporting evidence or case law.

The examiner merely concludes that it would have been obvious to "provide the swatter of White with a downwardly extending keyhole slot as shown by Robinson since merely one mechanically equivalent connector is being substituted for another and the function is the same."

Yet again, the examiner's contention is blatantly

erroneous, and fails to afford any weight to either reference or claims 7 & 9, and is unsupported by any provision of the MPEP or case law.

Firstly, the sight 4 in White extends upwardly and is spring loaded. The knob-a in Robinson extends downwardly and is fixed.

The 3-bands are releasably retained on the sight 4; yet the cord-C appears fixedly attached to the knob-a.

The sight 4 permits the 3-bands to be liberated; and the knob-a does not appear to permit liberation of the cord-C, but allows that cord-C to liberate the ball-D.

These are fundamental features of the two references White and Robinson; and are quite inapposite from each other and from Applicant's claims.

Where then is the examiner's evidentiary support that the connectors are equivalent or serve the same function, when this is clearly not the case, nor supported by any evidence in the two references?

As for the examiner's contention of obviousness, that is a mere conclusion, and is not the legal motivation required by the MPEP. And, to the contrary the two references teach away from each other since the toy in White is configured to hurl the 3-bands, and the toy in Robinson is configured to retain the cord-C; and the structures and functions are correspondingly different, not the "same" as the examiner baldly contends.

In claim 9, the keyhole slot 30 is open downwardly for the benefits stated in the specification.

If the downward knob-a of Robinson were used in White to attach the right end of the 3-bands under the barrel 1, that toy gun would clearly be rendered inoperable for its intended purpose; which, yet again, is evidence of nonobviousness.

Claim 8 is a method claim overlooked by the examiner in his comments in para. 5.

Claim 8 recites use of the swatter to swat an insect by spontaneous contraction of the lash to propel the distal end

in contact with the insect.

No such use is disclosed or suggested in White and Robinson; and the examiner has not shown otherwise.

In White, the 3-bands are hurled away, with no teaching of hurling at an insect; no teaching of any swatting efficacy; and clearly without any teaching or possibility of retaining those 3-bands on the barrel 1 at the sight 4.

In Robinson, the cord-C is configured and used to hurl the ball-D, which has not counterpart in White or in method claim 8.

In para. 5, the examiner has also overlooked claim 10 which recites the combination of the latch 20 and trigger 24 for firing the lash while the proximal end 18a remains fixedly attached to the rod, and the lash distal end 18b is hurled forwardly.

As indicated above, the entire 3-bands of White are hurled away, and in Robinson the ball-D is hurled away due to the fundamentally different configurations of the respective toy guns.

For claim 11, the examiner identifies the hammer 9 of White, without regard to context. That hammer 9 in White is used in a configuration to hurl the entire 3-bands, not retain those bands on the toy.

And, Robinson would teach away from using that hammer 9 because the catch-b is taught to cooperate with the knob-a and cord-C.

The examiner's contentions clearly show hindsight selection of naked elements without regard to context.

The examiner is not permitted to use patents as mere parts bins and select only specific elements to the exclusion of other elements: the whole analysis mandates otherwise.

No patent application would ever conclude in a patent if examiners were so free to randomly select naked elements from disparate references using the blueprint of an Applicant's claim to effect the hindsight reconstruction thereof, as the present examiner has done time and time again for sixteen

years.

Remarkable to the many references of record is the multitude of toy guns having basically the same parts, the same functions; yet, nevertheless, there are indeed differences which have permitted the different patents to issue.

Examiners are well trained in identifying similarities between claims and references, and are often blinded by hindsight to disregard or fail to afford due weight to the differences recited in claims, as the present examiner has repeatedly done.

Three times now, the present examiner has been overturned on appeal before the BPAI. And in the latest decision, the BPAI has expressly noted the "rather imaginative rationale advanced by the examiner to account for the acknowledged deficiencies of the ..." applied references vis-a-vis the claims.

The "rather imaginative rationale" of the examiner continues now in this unwarranted reopening of prosecution following the full reversal on appeal; now with the imprimatur of the Director himself.

For claim 12, the examiner identifies springs 15,16, yet again out of context from the combination recited in claim 12, and against the teachings of Robinson being combined with White.

Claim 12 recites a combination in which the trigger spring 26 is positioned to return the trigger to the cocked position upon release of the trigger.

In White, the spring 15 cannot provide this capability because the spring 16 causes the lever 7 to rotate clockwise when the trigger 13 is pulled, and the extension 14 is then trapped against the lever 7 preventing its return to any cocked position.

White at col. 2, ll. 5+, then expressly states that the hammer 9 must be manually pressed rearwardly to return the trigger 13 to its former position.

Accordingly, mere release of the trigger 13 itself cannot return the trigger 13 to its cocked position, and the examiner has therefore failed to substantiate the rejection of claim 12.

For method claim 13, the examiner yet again merely contends without any evidentiary or logical support that the combination of White and Robinson "performs the recited method," when that combination clearly does not.

There is no insect disclosed in White and Robinson; no combination of toy guns in which the 3-bands remain attached to the barrel 1; and certainly no teaching that the left end of the 3-bands is used to swat any insect.

Claim 14 has been overlooked by the examiner in para. 5, and therefore no basis has been provided to reject this claim for any reason.

Claim 14 recites corresponding lengths of the lash and rod for stretching the lash to its maximum length without breaking.

No such teaching is found in White and Robinson, and the examiner cannot rely on mere speculation to support this rejection.

Indeed, the 3-bands 19 illustrated in figures 1 & 2 of White appear quite fat, the connections 19 appear quite fat, and the thickness of those bands appears quite uniform, which all suggest that the 3-bands are hardly stretched at all, let alone stretched to their maximum length without breaking.

The examiner can readily test this interpretation by connecting together 3-bands in the manner of White and stretching those bands around the ends of two pencils separated apart.

This test will clearly show that each of the bands will decrease significantly in thickness and become distorted in a manner not evident in White.

The examiner's contention regarding claim 15 to stretch the 3-bands of White to the maximum for maximum range is nothing but speculation; and overlooks the fundamental

teachings of White that the 3-bands can be formed from old inner tire tubes.

Each band could have any size whatsoever; and the collective length of the three bands could have any length as long as that collective length were, perhaps, shorter than the distance between the sight 4 and the extension 10.

That allows an infinite number of band lengths; and only one collective length would be possible in order to stretch the three bands to near their breaking point.

And, that length is not taught by White, not suggested by White; nor is that length even possible.

As indicated above, the 3-bands have 3 different lengths 41,37,35 mm, which suggests their crude fabrication from the old tires.

It would take an impractical number of tries to cut 3 bands to specific length and then connect them together with a collective length sufficiently less than the total length from sight 4 to extension 10 to achieve the maximum stretchable length from the unstretched length.

Correspondingly, even if the user were to obtain commercially available bands to fabricate the 3-band configuration of White, then it would take a myriad of tries to find the one and only combination having the requisite short unstretched length to achieve the longer, near breaking length recited in claim 14.

And, the examiner would find this obvious to accomplish by the child user of the toy gun?

Or, perhaps by the adult supervisor who would have to cut the 3-bands from the old inner tire tubes?

And, what about the safety of operation of the so modified toy gun of White? Would the adult supervisor permit a child to use a toy gun in which the 3-bands were so tightly stretched that they might break, or that they might strike the child in the eye? The typical lament of any parent.

As for claim 15, the express recitation is three times the unstretched length for the advantages contained in the

specification including increased striking range when the proximal end of the band remains fixedly attached to the distal end of the rod.

No such capability is taught by White in which the 3-bands must be hurled away in toto "to a considerable distance."

The examiner's bald contention of obviousness is clearly a hindsight fabrication without evidentiary or logical basis, and clearly does not meet the high standards of legal motivation.

Of course, anything is possible. Anything could be tried.

But MPEP ch. 2100 requires much, much more in meeting the legal motivation requirements for preventing examiners from making such unfounded contentions without evidentiary and legal support.

As for the equal lengths recited in claim 16, the examiner again simply opines that White so "contemplates" equal length bands and the knot midway.

But, where in White is such "contemplation," or evidentiary support thereof?

At page 1, ll. 87+, White states the use of one, two, or three rubber bands connected at 19.

At page 1, ll. 19+, White states that the bands may be formed from old inner tubes.

Yet nowhere does White "contemplate" the specific combination recited in claim 16.

Indeed, as indicated above the 3-bands expressly shown in figures 1 & 2 of White have three (3) different lengths, 41/37/35 mm rendering quite impossible any combination thereof in which any connection 19 would be place midway between any cocked length thereof.

Accordingly, withdrawal of the rejection of claims 7-16 under Section 103(a) over White and Robinson is warranted and is requested.

Applicant traverses the rejection of claims 1-20 under

Section 103(a) over Watkins and White, in yet another "rather imaginative rationale advanced by the examiner," this time exchanging roles of the two references over that found in para. 4.

As indicated above, both Watkins and White are nonanalogous art and disclose toy guns for shooting projectiles, which in the case of Watkins is a pea or pellet, and in the case of White is the entire 3-band assembly itself.

As for claims 1 & 17, the examiner has provided no evidence that all of the elements in these claims are found in Watkins, except for the quite significant pair of bands which solve many stated problems over the parent patent.

Fundamentally, neither Watkins nor White disclose any insect swatter at all; instead they disclose toy guns.

The examiner erroneously combines claims 1 & 17 for a pair of bands, when that pair is only recited in claim 1, while claim 17 recites a figure-8 lash with opposite loops.

And, the examiner erroneously concludes that "it would have been obvious to provide Watkins with a pair of rubber bands as shown in White for ..." extending range and/or reducing stress in clearly fabricated reasons not supported by any evidence in these disparate references, and not based on legal motivation; and to the contrary, based solely on the examiner's reading of Applicant's own specification.

Remarkable indeed, is this latest line of rejection by the examiner, with equally imaginative rationale, divorced from reality and divorced from evidentiary and legal support.

How does the examiner propose to modify Watkins with the "pair of annular rubber bands" from White?

White discloses at pg. 1, ll. 87+, one, two, or three rubber bands for the purpose of using available old inner tire tubes.

White fails to explain any difference whatsoever between using one, two, or three bands, while any one of those configurations is preferred.

The only commonality of the '3-bands in White is their convenience of fabrication from old inner tire tubes, and the corresponding sizes thereof for meeting the specific length of the long barrel 1.

If one old tube is big enough, then one would assume one band would be long enough.

If two smaller tubes were available, then it would also be assumed that two tubes could be combined into 2-bands for the requisite length.

And, if three yet smaller tubes were available, then it would also be assumed that three tubes could be combined into 3-bands for the requisite length.

Where then in Watkins or White does the examiner identify any "range" problem requiring a solution?

Where in Watkins or White does the examiner identify any "stress" problem requiring a solution?

No such problems are found in either reference, but, of course, the examiner has again used his imagination to fabricate those reasons, and a myriad of reasons could also be fabricated in hindsight, which the examiner has been quite adept at doing over the 16-year odyssey in prosecuting the parent application, and now this improvement application.

Both toy guns in Watkins and White appear to work quite well just as they are, and there is no problem disclosed in either reference for which the examiner's fabricated "solution" would be relevant.

This is yet another clear example of the examiner's prejudgment of the present application, and the examiner's continued drive to reject each and every claim for any reason whatsoever; notwithstanding the recent full reversal by the BPAI.

Let's assume that one skilled in the art would have a reason (any reason) to combine White with Watkins. What would that combination entail?

In Watkins, a single rubber band 14 is tied to the leather loop 16 in which the pea 20 is held for hurling.

So, let's replace that single band 14 with two bands from White; and then what do we have? Two bands with a connection 19, and then the leather loop 16 at the end of the two bands.

And, how is this relevant to claims 1 & 17?

Claim 1 requires that the lash have opposite ends specifically configured to function, with the distal end of the lash being available to swat an insect.

Yet, the loop 16 is required in Watkins; that loop 16 is leather not rubber, and the second band proposed by the examiner is intermediately located, and does not provide an opposite end of the 3-piece assembly.

This combination, apparently proposed by the examiner, lacks credulity and requires a gross distortion of the basic invention in Watkins.

Applicant is not required to speculate as to the examiner's proposed combination; MPEP 706.02(j) places the burden on the examiner to explain the combination and the legal basis therefor, now lacking in the examiner's overly simplistic fabrications.

As for claim 17, the 3-piece combination of Watkins and White proposed by the examiner clearly does not a figure-8 make; and the leather loop 16 in that combination is clearly not elastic.

Applicant need not further speculate as to the examiner's intentions in rejecting independent claims 1 & 17, since speculation is no basis to reject claims under Section 103; and the examiner's fabrications fail to comply with the specificity requirements of MPEP 706.02(j) and the legal motivation requirements of Ch. 2100.

"Extended range," and "reduce the stress" are clearly not legal motivation, nor based on any evidence in either Watkins or White.

The handgun in Watkins is short, the rifle in White is long, so how could the long bands of White be substituted for the short band in Watkins, and why?

At pages 4 & 7 of the office action, the examiner finds in White relatively weak 3-bands for claim 19, which would correspondingly reduce the range of shooting the pea 20 in Watkins, but disregarding this teaching, the examiner simply contends to the contrary that the weaker series-bands when blindly applied to claims 1 & 17 would somehow be transformed to "extend the range" in defiance of the laws of physics.

"Reduce the stress." Where is this taught in the two references?

Would not the examiner's use of the bands and connections 19 of White increase stress, especially at the stress concentrations at the connections 19?

At page 5, the examiner previously argued "maximum stretchable length" for claim 15, and would not that teaching have increased, not decreased, stress?

Where then is the examiner's evidentiary or scientific support to "reduce stress?"

Furthermore, the expressly recited configurations of the insect swatters in independent claims 1 & 17 permit the free distal ends of the lashes to strike the insect in the manner of the conventional whip.

In Watkins, the pea 20 is hurled, and therefore liberated from the toy gun, with no teaching that either the band 14 or leather loop 16 have any efficacy for swatting insects.

In White, the entire 3-bands are hurled from the toy gun, yet again without any efficacy for swatting insects.

In both cases, it is highly unlikely that either toy gun could indeed function as an insect swatter.

For method claim 2, the examiner simply concludes obvious to use Watkins to shoot an insect "for the purpose of providing satisfaction to the user."

This rationale is not legal motivation, is not supported by the references, and even appears somewhat perverse.

Watkins expressly teaches shooting the pea 20. How is shooting any pea 20 relevant to method claim 2 in which the

lash distal end is configured to strike the insect?

For claim 3, the examiner admits that the pin 18 in Watkins does not "pivot," but no matter, let's just disregard the actual configuration of Watkins by substituting in whole the pivoting latch of White "for the purpose of a crisp release of the latch to increase the accuracy of the rubber band gun."

"Rather imaginative rationale" the BPAI previously attributed to the examiner. Without a doubt.

Why has the examiner taken this clear warning by the BPAI as license to continue that unwarranted practice of "imaginative rationale" to fabricate rejections without any regard to the actual facts or the actual references of record?

The Patent Rules mandate that the Applicant identify errors committed by the examiner in rejecting claims; and the errors are almost too numerous to identify and list.

See now the multiple-page length of this response in attempting to meet that requirement to identify errors.

We continue.

"Crisp release." "Increase accuracy."

Where in Watkins and White are problems presented for these "solutions" being proffered by the examiner?

The examiner has already attempted to modify Watkins for to replace the band/leather 14,16. Now, the examiner proposes further modifying Watkins to substitute the entire firing mechanism from White for the pin 18.

Why not just complete that modification and substitute the entirety of White for Watkins and complete the transformation of Watkins into White? Why stop?

The examiner's attempt to modify, and modify, and modify Watkins for reason after reason after reason is evidence in and of itself of the patentable novelty of Applicant's claims, no matter how simple they might be, and no matter that the applied references are quite ancient.

The toy guns of Watkins and White are so fundamentally

different from each other, it strains credulity to find any merit in the examiner's use thereof. The examiner is clearly using each of Applicant's claims, one by one by one, as the guide for the rejections under para. 6 as they are developed by the examiner from page 5 continuously to page 7, without even one break for a paragraph.

And, even if the pivoting latch of White were substituted for the pin 18 in Watkins, the resulting combination remains nevertheless a pea shooter. A simple pea shooter which requires the leather loop 16 to hold the pea 20 for hurling in a configuration having no relevance to any of Applicant's claims, let alone claim 3 being so rejected.

The pin 18 firing mechanism in Watkins has a specific configuration and a specific purpose which the examiner supplants by proposing the complete substitution from White, without cause or evidence.

Method claim 4, the examiner again merely concludes is obvious since insects "are an abundant target that needs control."

How does "abundant target" meet the legal motivation requirements of ch. 2100; and why would a child use a toy gun for that purpose? And, how would that toy gun be used?

The toy gun of Watkins is a simple pea shooter as indicated above, and method claim 4 does not simply shoot a pea at an insect but uses the whipping action of the lash itself to hurl the lash distal end at the insect.

Neither the compound band 14 proffered by the examiner nor the leather loop 16 in Watkins have any efficacy for swatting insects, nor does Watkins or White teach that use thereof.

Claim 5 recites the handgrip cooperating with the latch.

The examiner recognizes the handgrips in Watkins and White, and of course, the examiner opines that it would have been obvious to modify Watkins "for the purpose of leasing [sic] the lash near the user's hand," whatever that means, which is not certain.

The examiner has yet again overlooked the combination recited in claim 5, and is continuing to build his rejections in a house-of-cards fashion without regard to the stability of that house, and without regard to the merits.

That house-of-cards will no doubt fall, either now or at the next appeal (which appears certain), because the examiner must disregard the fundamental differences in Watkins and White to fabricate rejection after rejection on "imaginative rationale," now lacking even the color of propriety.

The combination in claim 5 provides a specific latch to mount the free distal end of the lash for spontaneous contraction of the lash to swat the insect.

The pea shooter in Watkins remains a pea shooter no matter how much the examiner chooses to change the specific pin 18 configuration, without regard to the specific function and purpose and benefits thereof taught by Watkins.

No, just substitute the latch and handgrip from White for any purpose; yet the pea shooter of Watkins remains just a pea shooter, having no relevancy to Applicant's swatter, or claim 5, for example.

The examiner does not stop at claim 5, but continues.

Claim 6 again recites a method to swat insects with the distal end of the lash; yet the examiner's remarks on page 6 of the office action abruptly end with "In reference to claim 6."

Of course, the examiner intended to repeat his rejections in the manner of method claims 2 and 4, yet this time with the apparent contention of obviousness to grip the handgrip and pull the trigger, and with yet another "rather imaginative rationale" that that is what handgrips are for?

Nevertheless, the express method in Watkins is to shoot peas 20. A pea shooter does not a whip make; and method claim 6 does not recite a pea shooter for which Watkins might have some relevance.

In claim 7, the examiner explains that one band goes in the slot 34, and the second band (from White) is "attached to

the pusher element 16." So? Where is any legal motivation to so combine, and how is that relevant to claim 7?

There is no leather loop 16 recited in claim 7. And, the leather loop 16 is expressly leather, and not rubber.

So, even if the band/loop 16 of Watkins were reconfigured with two bands 14 end-to-end, those two bands would still be joined to the leather loop 16. How possibly could that 3-piece train meet the configuration in claim 7 in which the opposite ends of the lash are rubber, and those opposite ends are specifically configured at opposite ends of the rod?

Method claim 8 has been overlooked by the examiner.

Claim 8 requires that the lash second loop is placed around the latch, and that second loop forms the opposite end of the lash.

In Watkins, the opposite end of the band/loop is the leather loop 16, and that loop is not placed around the pin 18.

In White, the opposite end of the 3-bands is placed around the extension 10, but there is no leather loop 16; and the right end of the 3-bands is not fixedly attached to the sight 4.

What then forms the evidentiary and legal basis to reject method claim 8 overlooked by the examiner in his remarks?

From claim 7, the examiner jumps to claim 9.

The examiner now recognizes the opposite configurations of the downward keyhole slot 30 recited in claim 9, and the upward slot 34 disclosed in Watkins.

But, the examiner disregards this difference by citing In re Japikse and merely stating that "no stated problem is solved."

It is interesting that the examiner uses the "no stated problem" contention to reject Applicant's claims, but the examiner conspicuously fails to identify any "stated problem" in the applied references when fabricating his "rather

imaginative rationales" to reject the claims.

The examiner inherently recognizes that the legal motivation provisions found in ch. 2100 of the MPEP are indeed based on solving "stated problems," yet the examiner disregards those provisions in order to fabricate rejections when combining disparate references because that is an examination expedient, and renders unwarranted those very rejections being proffered by the examiner.

Now, the examiner merely states that Applicant has not stated problems for which claim 9 would have significance.

This is clear error; and Applicant's specification indeed has many stated problems being solved, many of which are clearly found in the Background section, and repeated in the detailed description along with other problems.

As for claim 9, the keyhole slot 30 is introduced at para. 42, and described in detail in subsequent paragraphs.

Striking range and accuracy are two problems being solved, and the simple construction of the downward keyhole slot provides a loose joint to mount the lash proximal end without unintended liberation, and a smooth rod over which the lash and its knot must travel to reach the insect.

The upward slot 34 in Watkins interrupts the smooth surface of the barrel 10, which is not relevant therein because the band is used to propel the leather loop 16, which in turn hurls the pea 20.

The band 14 in Watkins must be fat and strong to catapult the pea 20, which are inapposite to the requirements of the double-band lash recited in claim 9 that requires thinness and flexibility to function as a whip since the distal end of the lash must be whipped as far as possible in the striking range to effectively swat insects without detection.

And, such a thin and flexible lash could inadvertently be abraded at the upward slot 34 of Watkins, or could inadvertently be released from that upward slot by forward inertia of the lash.

In claim 9, the slot is open downwardly, but the lash is inclined oppositely and upwardly to therefore prevent any undesirable interaction between the lash and the slot during the whipping method.

As for citing In re Japikse, that case does not hold what the examiner contends. Japikse relates to the mere rearrangement of parts; and the application of case law requires an initial showing of factual relevance overlooked by the examiner.

Also overlooked by the examiner is the fact that claim 9 depends on claim 7, and claim 7 depends on claim 5, and claim 5 depends on claim 3, and claim 3 depends on claim 1.

In Japiske, an electrical switch was simply relocated.

But to reach claim 9, the examiner has made fabrication after fabrication after fabrication for claims 1, 3, 5, 7, and finally claim 9. Claim 9 therefore is not the mere change of a single element, like the switch in Japiske.

Mere rearrangement of parts therefore has no relevance since the patentable novelty of claim 9 is not based on the mere orientation of the keyhole slot therein, be that up or down. The novelty in claim 9 is based on the combination of many features from claims 1, 3, 5, 7, and 9, itself.

The rejection of claim 9 by the examiner, is yet another example of the prejudgment of the claims and the failure by the examiner to afford due weight to the different combinations being recited, and their significant benefits expressly disclosed in the specification.

Claim 10 has also been overlooked by the examiner, and therefore any rejection thereof is unwarranted.

Claim 10 recites the specific configuration of the perpendicular latch 20 and cooperating trigger 24.

In Watkins, the triggering mechanism is fundamentally different both from claim 10 and from White.

Watkins requires the pin 18 and the slots 24,26 and the flexible handle 12 in a quite simple and effective combination in which the pin 18 is lowered by simple bending

of the handle 12 to release the band 14 and fire the pea 20.

In spite of this simplicity, and in spite of there being no problem disclosed in Watkins with that effective triggering mechanism, the examiner apparently finds it obvious to substitute the entire triggering mechanism of White (see the examiner's rejection of claim 3) for that simple pin 18 combination.

Despite increasing the complexity and cost of the toy gun in Watkins, the examiner would find this obvious "for the purpose of a crisp release..." as proffered by the examiner under claim 3.

"Crisp release?" This, when the pin 18 of Watkins would already appear to be quite effective at achieving a "crisp release" to accurately shoot the pea 20.

Of course, the child using the pea shooter of Watkins would find the "increased accuracy" proffered by the examiner advantageous.

This same examiner has rejected claim 9 with the allegation that Applicant has not stated any problem being solved. Yet, the examiner needs no statement of any problem to be solved in Watkins because it is much easier to fabricate problems in hindsight and disregard the requisite mandates of MPEP 706.02(j) and ch. 2100.

Yet, such disregard of the rules can only lead to unwarranted rejections, and the many rejections proffered by the examiner suffer the same problems in lack of evidence, lack of analysis, lack of logic, and lack of legal motivation.

The examiner continues with claim 11 which recites the cooperating thumbgrip 28.

And, the examiner simply applies the hammer 9 of White without any analysis or factual or legal showing whatsoever.

The examiner has failed to show any legal motivation to modify Watkins and replace the pin 18 triggering mechanism with that from White.

And, even if that were done it would appear quite

certain that the extension 10 after pivoting forward would still project upwardly and interfere with the free flight of the leather loop 16 and pea 20 located behind the tie 37.

In that case, the loop 16 might become snagged on the extension 10, and the pea 20 would be shot at an inclination upwardly along the inclined extension 10, and severely reduce the accuracy of the toy gun for the child user, instead of increasing the accuracy, which is the basic premise proffered by the examiner to combine the references in the first instance.

For claim 12, the examiner simply identifies the spring 16 of White without any analysis or legal motivation, which clearly fails to meet even a prima facie showing.

As indicated above, there would be no good reason to replace the triggering mechanism of Watkins with that of White; and indeed, the introduction of the extension 10 from White would clearly interfere with the free movement of the leather loop 16 and pea 20 which must follow the band 14.

And, claim 12 has been addressed above in that neither spring 16 or 15 in White permit the trigger to return to the cocked position upon release of the trigger.

Return of the trigger 13 in White is blocked by the lever 7 until that lever 7 is returned to its initial position.

The examiner has overlooked claims 13 & 14, and therefore no prima facie showing has been made, and Applicant need not speculate as to what the examiner intended, when, of course, there is no plausible combination of Watkins and White relevant to these claims.

Claim 13 recites a specific method, and like the previous method claims addressed above, the examiner has provided no evidence that the toy guns in Watkins and White would have been used to swat insects; not does either toy gun use any whipping action to whip the distal end of a lash against an insect.

In Watkins, the pea 20 is hurled away; and in White, the

3-bands are hurled away, and no whipping method is contemplated by either reference.

Claim 14 recites the respective unstretched and collective lengths for achieving maximum stretch without breaking.

Neither reference Watkins nor White has any relevant teaching; with Watkins requiring a strong, fat band 14 to propel the pea 20, and White requiring old tire tube bands to loosely fit the length of the long barrel 1.

For claim 15, the examiner merely opines that it would have been obvious to have the cocked length in Watkins at least three times the unstretched length for "more energy" and "range," and references Watkins at col. 3, 11. 29-37.

However, the examiner has failed to afford due weight to claim 15 and the problems being solved and the advantages; and the examiner has failed to evaluate Watkins and White in the whole.

The examiner has overlooked that the examiner himself has already modified the single band 14 in Watkins by doubling it in accordance with White.

However, inherent in the doubling of that band 14 is the reduction by 50% of the spring rate thereof (see para. 62 of Applicant's specification). Halving that spring rate would therefore halve the energy and effectively halve the range of propelling the pea 20.

But, the examiner has merely argued without scientific basis that the double-band modification of Watkins would increase stored energy and increase range, and in particular get those increases with the triple length recited. Clearly, the examiner has been trapped by his own distorted logic, and the blind evaluation of naked claims without regard to the whole.

Claim 15 is quite specific: at least three times the unstretched length. And, Section 103 mandates equally specific teaching based on evidence in a reference, clearly not provided by the examiner in the rush to reject even the

most specific claim of the group.

Where then is any objectivity being shown in the examiner's examination of the twenty claims, if even the most specific feature will not be afforded any weight by the examiner?

White shows a fat, strong, single band 14 specifically configured to hurl the pea 20.

Watkins shows three bands in a train, which would have a resultant stiffness of about  $1/3$  the individual stiffnesses, if equal.

To increase the number of bands 14 in Watkins would therefore be contrary to the examiner's own rationale found at page 6 of the office action because more bands in series in Watkins would decrease the stored energy and range of the toy gun. This latest error by the examiner has fundamental bearing on independent claims 1 & 17 as well for which the examiner simply opines that Watkins would have been so modified for increasing its range, when, to the contrary, the range would be reduced.

To increase the number of bands 14 in Watkins would also be against the very teachings of Watkins itself.

The examiner cites col. 3, ll. 29-37, which specifically teaches that any rubber band could be used with "length somewhat shorter than the barrel 10." "Generally speaking, the shorter the length of the band ..., the greater the impetus given to the projectiles shot by the gun."

"Somewhat shorter" does not give the examiner license to reject claim 15 in which the lash is over two-thirds ( $2/3$ ) shorter than the cocked length.

And, "Generally speaking" does not give such license either.

Overlooked by the examiner, yet again, is the whole teachings of Watkins and White, and the whole of claim 15.

In Watkins, the band 14 is single to maximize its spring rate, which would be correspondingly diminished if modified in series.

In Watkins, the band 14 thick and fat, see most of the figures, because a thick fat band, irrespective of length can store more energy to hurl the pea.

The length of the band 14 in Watkins is less important than its other properties, "Generally speaking," because that band 14 must be specifically configured to cooperate with the leather loop 16 to hold the pea 20 and hurl it.

In White, the length of the 3-bands is quite irrelevant to Watkins, because the 3-bands in toto are being hurled and face different problems, and would therefore require different characteristics in the 3-bands.

And, in claim 15 the double bands have opposite ends between which determines their length and which are differently mounted to the common rod for effecting the desired whipping function.

In whipping, the elasticity of the bands is important but competes with swatting energy. See para. 7 of the Background for competing considerations.

Para. 48 explains the specific advantages of the claim 15 configuration, neither disclosed nor suggested by the two disparate references Watkins and White.

As for claim 16, the examiner admits the failures of Watkins and White, but "at any rate, it would have been obvious ... for the purpose of extending the range of the rubber band gun."

However, as indicated above, using "two or three knotted rubber bands" as the examiner now contends, would, to the contrary, decrease the firing range of Watkins and not increase that firing range because less energy could be stored in those two or three bands arranged in the series shown in White.

However, the examiner should recognize that if two or three bands were instead mounted in parallel in Watkins, then more energy could be stored in those parallel bands, and indeed increase the range of the rubber band gun.

But, claim 16 (and claim 1 from which it depends) does

not recite the use of parallel bands, and the examiner has been caught in his own contradictions.

As indicated above, the three bands of White have different lengths, 41/37/35 mm, and the examiner's mere statement of equal lengths is not supported by the evidence.

And, whether two or three bands from White are substituted for the single band 14 in Watkins, the examiner has again overlooked the essential leather loop 16 which defines one of the two opposite ends of the combined train.

The examiner has not shown how it could even be possible to place one connection 19 or the second connection 19 in the combined band/loop train of Watkins midway between the cocked length of first and second bands when cocked in Watkins.

Regarding independent claim 17, the examiner has only briefly addressed it in passing at the beginning of para. 6, and without regard to the different elements recited therein, instead addressing only the elements of claim 1.

Accordingly, the examiner has failed to establish even a prima facie showing for claim 17.

Claim 17 recites an insect swatter in contradistinction from the toy guns disclosed in Watkins and White.

Claim 17 recites a lash having a figure-eight configuration, with opposite first and second loops.

The single band 14 in Watkins lacks any figure-eight configuration, and the leather loop 16 is tied to one end thereof.

Claim 17 also recites that the first loop is retained in the slot 30 at the end of the rod 12.

In White, the 3-bands necessarily are temporarily held on the sight 4 and the extension 10; no slot.

The examiner's reason to combine Watkins and White is mere conclusion as indicated above, and lacks evidentiary basis and lacks legal motivation.

And, even the reason proffered by the examiner in hindsight is erroneous since substituting two or three bands from White for the single band 14 of Watkins would

correspondingly reduce the collective spring rate and stiffness thereof, and reduce the available energy for propelling the pea 20, and would correspondingly reduce the accuracy of shooting due to the slower propelled pea.

As for reducing stress on double bands in Watkins, neither reference indicates that stress is a problem, and the examiner has inherently admitted in his contentions regarding claim 15 that it would be obvious to stretch the bands to their maximum limit to increase stored energy, and therefore the increased stress would not appear to be a problem to the examiner himself, or to the inventors in Watkins and White.

Clearly, the examiner simply fabricates reasons to combine the references for the different claims based on perfunctory habit, regardless of merit or evidence, without regard to consistency, and without regard to the whole, and without regard to specific problems taught by the references for which the different solutions thereof could have some relevance.

Claim 18 has been overlooked by the examiner and introduces the handgrip 14, latch 20, and trigger 24 in a specific combination not previously addressed by the examiner.

Watkins clearly teaches the use of the special pin 18 and flexible handle 12 in significant distinction from the complex triggering mechanism of White.

As indicated above, should the examiner propose to substitute the extension 10 from White for the pin 18 in Watkins, then that extension would clearly interfere and obstruct the free movement of the leather loop 16 and pea 20 as they travel forward over that extension 10.

The pea 20 would no doubt be deflected outwardly along the extension 10 in the manner of a ski slope, and would destroy the accuracy of flight of the pea 20.

As for claim 19, the examiner states that the two or three bands from White substituted for the single band 14 in Watkins would inherently meet the collective spring rate

recitation, but has omitted the requisite legal motivation.

As indicated above, and the examiner himself contends that the single band 14 in Watkins is used to store energy to propel the pea 20. And, by substituting two or three bands from White, the energy storing capability is halved or even reduced by two-thirds for identical bands, which in turn would severely reduce the energy storing capability of the so modified band 14.

This combination proposed by the examiner is clearly against the fundamental teachings of Watkins, and is clear evidence of the nonobviousness of Applicant's claims.

As for claim 20 and its identical bands, the examiner nevertheless simply contends that this would be obvious "since the function is the same and no showing of criticality was made."

Applicant's specification is replete with the significance of using series bands for the lash; and the benefits thereof; and the special advantages of identical bands.

"No criticality?"

Firstly, claim 20 depends from claims 19, 18, and 17 in turn, and is a combination claim.

The examiner has not cited any provision of the MPEP or case law which requires any "criticality" at all, and the use of this basis is nothing more than perfunctory examiner edict.

And, to the contrary, "criticality" has indeed been shown in the specification.

The "criticality" is based on the problems observed in the single band swatter of the parent patent; and the entire application is specifically written in that regard.

The application identifies those problems, introduces the solution in the series lash; and then explains the function, performance, and benefits.

How is it possible that the examiner has missed this description in the specification in direct support of all

claims, and in particular claim 20?

The answer is that the examiner has not evaluated Applicant's claims in the whole, but in the naked vacuum of each claim without regard to context of its parent claims, and without regard to the specification.

"The function is the same," the examiner opines?

To be certain, the functions in Watkins and White are not the same.

In Watkins, the band 14 is configured to cooperate with the leather loop 16 to shoot the pea 20.

In White, the 3-bands are made from old tire tubes, and configured to be shot in toto.

Where is the "same function?"

In claim 20, the two bands would have one-half the stiffness of a single band for the benefits disclosed in the specification, including increased striking range.

The use of two bands 14 in Watkins would halve the energy storage capability of those bands to reduce the range of the pea 20.

"Same function?"

Para. 61 states that the midway knot 40 uses the rod itself to guide the lash during swatting, and that swatting has accuracy of direction for swatting the distal end of the lash against the insect.

All twenty claims has the examiner rejected, all twenty.

This, even following a full reversal by the BPAI clearly noting the examiner's "rather imaginative rationale."

To be certain, the next BPAI may be surprised by the further imaginative rational of the examiner shown in the latest prosecution following appeal, without regard to consistency, in rejecting each and every one of those twenty claims based on multiple references, multiple combinations, and multiple conclusions without regard to the references in the whole, or the essential requirement of legal motivation.

Accordingly, withdrawal of the rejection of claims 1-20 under Section 103(a) over Watkins and White is warranted and

is requested.

Since examination of this application has been reopened only under the direct approval and signature of Director Hajec; and Applicant now contends that no due cause is found for that reopening, Applicant hereby requests that the examiner bring this response to the personal attention of the Director himself for further evaluation of the propriety of reopening prosecution and the propriety of continuing this renewed odyssey.

Allowance of original claims 1-20 is clearly warranted, but as an accommodation to the examiner, Applicant has chosen to cancel and amend certain claims, without prejudice, to perhaps offer the examiner, and his Director, some new reason to finally allow the claims, short of another appeal.

Claim 1 has been amended to recite the identical pair of bands 36,38 with fixed proximal end 18a which is retained even after whipping, and the loose distal end 18b which does the whipping under extended striking range. See paras. 21, 23, 25, 26, 42, 44, and 65 for example.

Watkins expressly requires the single band 14 and attached leather loop 16. White teaches different bands. And, increasing the number of bands 14 in the manner proffered by the examiner under White, would reduce substantially the flight range of the hurled pea 20, and therefore teaches away.

Method claims 2 and 4 have been canceled, without prejudice, due to the corresponding method claims, and claims 22 and 23 have been substituted therefor.

Dependent claim 7 has been canceled, without prejudice, and replaced by independent claim 21 which combines the relevant features of original claims 1, 3, 5, and 7.

Claim 21 is therefore patentably distinguishable over the applied references for the same reasons presented above for claim 7, and its parents.

Method claim 8 has been amended to depend from claim 21 and to emphasize the generally parallel orientation of the

stretched lash as disclosed at paras. 23, 34, and 45, for example, and enjoys the increased striking range and accuracy of the duplex lash.

In contrast, the band 14 in Watkins is differently configured to hurl the pea 20, and requires a stronger band, not a weaker band, to effect that function.

Claim 9 has also been amended to depend from claim 21, and additionally recites that the keyhole slot 30 loosely joins the lash to the rod, and the lash is inclined straight to the latch 20 for improving line-of-sight accuracy of the whipping action as disclosed at paras. 25, 26, 42, & 44.

The band/loop 14,16 of Watkins is not configured for any whipping action to strike insects, but, instead, is configured to hurl the pea 20 from the loop 16.

And, of course, the operation of a whip and a hurled pea are quite different.

Claim 10 has been amended to depend from claim 21.

Claim 14 has been amended to depend from claim 10.

Claim 15 has been amended to depend from claim 10, and to further recite the lash striking range being greater than twice the unstretched length as disclosed at para. 49 & 65.

Since the insect swatter relies on whipping action to swat insects, it will necessarily require proximity to the insect, not relevant with the hurled pea 20 of Watkins, and must be configured to reduce the likelihood of detection by the insect, while also having effective striking range and swatting efficacy.

The configuration of the duplex lash provides a significant improvement over the single lash previously introduced in the parent patent, with surprising, if not synergetic, performance, clearly not given due weight by the examiner.

Independent claim 17 has been amended to emphasize the fixed retention of the lash first loop 36 in the slot 30 to prevent disconnection thereof when the lash is whipped during operation as disclosed at paras. 21, 26, and 42.

The figure-eight lash and duplex loops enjoy the increased flexibility thereof and increased striking range for effecting insect swatting neither disclosed nor suggested by Watkins and White in which combination proffered by the examiner would decrease the energy and striking range of the pea-shooting band 14.

Claim 19 has been amended to recite the half spring rate species of the duplex lash as disclosed at paras. 62 & 63, with corresponding increase in striking range.

Using half spring rate in the modified configuration of Watkins in accordance with the examiner's combination with White would clearly reduce efficacy thereof.

Claim 20 has been amended to depend from claim 18.

Claim 22 has been added to replace method claim 2 and depends from claim 3. This claim recites the species in which the collective length of the rod and latch is at least three times the unstretched length of the lash as disclosed at paras. 47 & 48.

This is important to reduce the likelihood of detection by the insect, and ensure that the rod is sufficiently long and the striking range sufficient to reach an insect without premature detection by the insect.

In contrast, the handgun of Watkins is shown to be quite short, and if the band/loop were used to swat an insect, it is most likely that the gun could not be placed close enough to the insect before detection.

And, the band 14 is fat to develop energy to propel the pea, but that fat band would have very little striking range itself. See para. 7.

Claim 23 has been added to replace method claim 4 and depends from claim 5.

In this species, the latch stop 22c from paras 35 & 39 is introduced adjacent to the latch 20, and under spontaneous contraction of the duplex lash, the latch spontaneously abuts the stop and adds forward inertia in maintaining the line-of-sight aiming at the intended insect. In other words, the

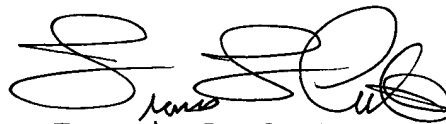
insect swatter goes "BANG" and the swatting results are improved.

In Watkins, the pin 18 merely retracts under the flexing of the handle 12 to ensure unrestrained travel of the pea.

Accordingly, added claims 22 and 23 are also well patentably distinguishable over the applied references.

In view of the above remarks, allowance of all remaining claims 1, 3, 5, 6, and 8-23 over the art of record is warranted and is requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Francis L. Conte', with a stylized, cursive script.

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